

REMARKS

The Office Action mailed March 25, 2003 has been carefully reviewed and the foregoing amendments are made in response thereto. In view of the amendments and the following remarks, Applicants respectfully request reconsideration and reexamination of this application and the timely allowance of the pending claims.

Applicants respectfully submit that no prohibited new matter has been introduced by the amendments. Support for the amendments to the claims can be found throughout the specification as originally filed. The amendment to claim 16 is made to correct an inadvertent truncation in claim 16 as it appeared at page 4 of the Amendment and Response filed January 6, 2003. Entry of the amendment is respectfully requested.

Status of the Claims

Claims 1-16 are pending. The Amendment filed January 6, 2003 has been entered.

Specification

Applicants acknowledge, with appreciation, the indication made on the Office Action Summary (Paper No. 33) mailed March 25, 2003 that the formal drawings filed on April 4, 2002 have been accepted. Applicants also note that the claim for domestic priority under 35 U.S.C. § 119(e) has been acknowledged by the Office.

The Office Action, at page 2 objects to the specification because it is alleged that the phrase <http://www.ncbi.nlm.nih.gov/> appearing on page 8, line 18 would be recognized as a live web link if it were to appear as text on the USPTO web site in the form of a patent. Without acquiescing to the grounds of the rejection, Applicants have amended the phrase to recite -dot- before the word “gov” instead of a period. Applicants respectfully assert that this would not be construed as an active web link once published on the USPTO web site. Withdrawal of the objection is respectfully requested.

The Rejection of Claim 1 Under 35 U.S.C. § 112 First Paragraph

Claim 1 stands rejected under 35 U.S.C. § 112 first paragraph for allegedly containing subject matter that was not described in the specification in such a way as to reasonably convey to one skilled in the art that the inventors had possession of the claimed invention at the time of filing. The Office Action asserts that claim 1 “does not provide support for all variations of the gene that lie outside the fragment.”

Applicants point out that claim 1 has been amended to recite “an isolated rpoB nucleic acid molecule consisting of from about 100 contiguous bases to about all of a sequence selected from the group consisting of SEQ ID NOS:2, 3, 4, 5, 6, 8, 9 and 10.” Applicants respectfully assert that the claimed sequences are fully disclosed in the application as-filed and that the inventors were in possession of the claimed invention as of the filing date. Withdrawal of the rejection is requested.

The Rejection of Claims 11-15 Under 35 U.S.C. § 102(b)

Claims 11-15 stand rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by De Beenhouwer *et al.* (WO 95/33851).

The Office Action alleges that the ‘851 publication anticipates the claims because the claim is drawn to “the contiguous oligonucleotide that hybridizes to the segment but does not necessarily possess the limitation of being fully complementary to the segment length sufficient to contain at least 5 bases that differ from SEQ ID NO:1.” Office Action at page 6.

Without acquiescing to the grounds of the rejection and solely in an effort to expedite prosecution, Applicants have amended claim 11 to recite “[a] polynucleotide probe or primer that is fully complementary to and hybridizes under stringent conditions to at least a contiguous segment of a mycobacterial rpoB sequence...”

Respectfully, nothing in the cited ‘851 publication teaches or suggests the claimed probes or primers as recited in claims 11-15. Withdrawal of the rejection is requested.

New Grounds of Rejection Necessitated by the Amendment of January 6, 2003

The Rejection of Claims 11-16 under 35 U.S.C. § 112, First Paragraph

Claims 11-16 stand rejected under 35 U.S.C. § 112 first paragraph for allegedly containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the art that the inventors had possession of the claimed invention at the time of filing.

The Office Action alleges that Applicants have not indicated where in the specification support for limitations “‘at least about 5’ bases that differ from SEQ ID NO:1” may be found. Applicants respectfully assert that support for the recited limitations may be found throughout the specification and claims as originally filed, for example at page 5, lines 13-24 and page 6, lines 15-22. Withdrawal of the rejection is respectfully requested.

The Rejection of Claim 1 Under 35 U.S.C. § 112 Second Paragraph

Claim 1 stands rejected under 35 U.S.C. § 112 second paragraph for allegedly being indefinite for its recitation of "consisting of at least about." Without acquiescing to the grounds of the rejection and solely in an effort to expedite prosecution, Applicants have amended claim 1 to recite "consisting from about." Withdrawal of the rejection is respectfully requested.

Indication of Allowable Subject Matter

Applicants acknowledge, with appreciation, the indication at page 8 of the Office Action that claims 2-10 are allowable.

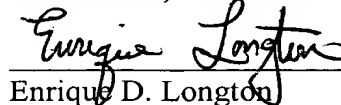
Conclusion

In view of the foregoing remarks, Applicants respectfully request withdrawal of all outstanding rejections and early notice of allowance to that effect. Should the Examiner believe that a telephonic interview would expedite prosecution and allowance of this application, he is encouraged to contact the undersigned at his convenience.

Applicants believe that no fees are required with this filing, however, except for issue fees payable under 37 C.F.R. § 1.18, the Commissioner is hereby authorized by this paper to charge any additional fees during the entire pendency of this application including fees due under 37 C.F.R. §§ 1.16 and 1.17 which may be required, including any required extension of time fees, or credit any overpayment to Deposit Account No.50-0310. This paragraph is intended to be a **CONSTRUCTIVE PETITION FOR EXTENSION OF TIME** in accordance with 37 C.F.R. § 1.136(a)(3).

Respectfully submitted,

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